

BOARD OF APPEALS CASE NO. 5204

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BEFORE THE

APPLICANTS: William Tyson & Pais Enterprises

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ZONING HEARING EXAMINER

**REQUEST: Variance to disturb a portion of the
subject property designated as Critical Area in the
CI, Commercial Industrial District; U. S. Route 40
at MD Route 24, Edgewood**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 6/5/02 & 6/12/02

HEARING DATE: July 29, 2002

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Record: 6/7/02 & 6/14/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, William A. Tyson and Pais Enterprises, are requesting a variance, pursuant to Sections 267-9D, 267-41.1H and 267-41.1G of the Harford County Code, to permit disturbance of a portion of the subject parcel which has been designated as a Critical Area in a CI/Commercial Industrial District.

The subject parcel is located on the north side of U.S. Route 40 (Pulaski Highway) approximately 300 feet east of Edgewood Road (MD Route 755) and is more particularly identified on Tax Map 65, Grid 2F, Parcel 220. The subject parcel consists of 5.06± acres, is presently zoned CI/Commercial Industrial and is entirely within the First Election District.

Mr. Alex Pais appeared and testified that he is a used automobile dealer and contract purchaser of the subject parcel. He stated that Route 40 frontage is very desirable for his type of operation allowing maximum visibility of the cars his business has to offer. The parcel is presently undeveloped and is surrounded by other commercial uses including McDonalds, Burger King, shopping centers, warehousing operations, restaurants, auto dealerships, residential uses and large merchandising operations. The Applicant wants to construct a sales office and display area for the vehicles on the front of the property along Route 40. He plans to operate the business from 9:00 a.m. to 7:00 p.m. 6 days per week. There will be 10-12 employees at this location. Based on surrounding uses the Applicant did not think his use would have any adverse impacts on adjoining properties or the intent of the Code.

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Mr. Robert Jones appeared and qualified as an expert environmental engineer. Mr. Jones described the parcel as being zoned CI and designated as High Intensity on the Master Plan. The front of the property is designated IDA and the rear is RCA. There is a sewer easement that bisects the property and there is a non-tidal wetland present that results from Route 40 runoff. Resulting buffers further limit the available building area without variances. In fact, according to the witness, the entire property is impacted by the expanded buffer. There is no identified habitat area and the quality of the wetland is described as poor. The witness described the bio-retention facility proposed that will meet the 10% rule that requires runoff after construction to have a 10% improvement in quality compared to runoff prior to construction. The witness described the numerous unique features of this parcel including areas of wetland, the sewer easement and the fact that this is zoned CI. Mr. Jones said that he has looked at other possible uses for this parcel including a restaurant and a gas station but it has been particularly challenging to configure those uses due to the numerous environmental constraints found on the property. In the opinion of the witness this is the minimum relief necessary to allow reasonable use of the parcel. The rear of the property will not be disturbed and no adverse impacts will result from the use, Mr. Jones went on to describe a 3:1 mitigation which will include planting of trees and payment of fees to the State of Maryland for loss of wetlands.

Mr. Anthony McClune appeared as representative of the Department of Planning and Zoning. The Department agreed that the subject property was unique and contained environmental features that severely limited the potential uses for this parcel. McClune indicated that the proposed use was compatible with other uses found on the Route 40 corridor. The parcel, according to McClune is entirely impacted by the expanded buffer area and no construction or use of any kind could be conducted without a variance. The Department recommends approval of the subject request.

There were no persons who appeared in opposition to the request.

The State of Maryland Critical Area Commission, in a letter dated May 13, 2002, provided favorable comment on the proposed project and recommended a number of conditions of approval.

CONCLUSION:

The Applicants are requesting a variance, pursuant to Sections 267-9D, 267-41.1H and 267-41.1G of the Harford County Code, to permit disturbance of a portion of the subject parcel which has been designated as a Critical Area in a CI/Commercial Industrial District.

Harford County Code Section 267-9D provides:

“Filings. Applications for variances, interpretations, special exceptions, special developments and reclassification shall be filed with the Zoning Administrator by the property owner, authorized agent or contract purchaser. Appeals from the decision of the Zoning Administrator shall be filed with the Zoning Administrator by the property owner, authorized agent or any person aggrieved.”

Section 267-41.1H requires that the Hearing Examiner make particular findings regarding each requirement of this Code section demonstrating that the request complies with each particular condition. Following is the hearing Examiner’s findings in that regard. Section 267-41.1H of the Code provides:

“Variances. Variances from the provisions of this section may only be granted if, due to special features of a site or other circumstances, implementation of this section or a literal enforcement of its provisions would result in unwarranted hardship to an applicant. All applications for variances shall be reviewed by the Zoning Administrator for conformance with applicable provision of this section, and a written report shall be provided to the Board of requested approval complies with each of the following conditions:

- (1) That special conditions or circumstances exist that are peculiar to the land or structure within the County’s Critical area, and a literal enforcement of the Critical Area Program would result in an unwarranted hardship.

This property is unique. It is zoned CI and is entirely encumbered by expanded critical area buffer. There is a sewer easement that bisects the parcel and the property is split between IDA and RCA areas. Because of the features found on the property, no use has been able to be developed. Denying the Applicant a reasonable use of the property is an unwarranted hardship.

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- (2) That a literal interpretation of the provisions of this section will deprive the applicant of rights commonly enjoyed by other properties in similar geographic and land use management area within the critical area.

If it were not for the expanded buffer, the Applicant would not need any variances for this proposed use. This is a reasonable commercial use of the parcel and the Applicant has demonstrated that the use can be constructed in a manner that protects wildlife and water quality. There are numerous examples of even more intense uses being made of property in this area and denial of the request would, in the opinion of the hearing Examiner, deprive this Applicant of rights commonly enjoyed by others in the Critical Area.

- (3) That the granting of a variance will not confer upon the applicant any special privilege that would be denied by this section to other lands or structures within the critical area.

The statute allows variances provided that protections are put in place to protect sensitive features and water quality. The Applicant has demonstrated that water quality will be improved, reforestation at a 3:1 ratio has been proposed as mitigation and the State provides for payment into a fund when wetlands are lost as a result of development. This is the standard provided by law and the Applicant proposes to meet each and every standard and is not seeking any special privilege or grant that would be denied to other lands or structures within the Critical Area.

- (4) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any conditions relating to land or building use, either permitted or nonconforming, or any neighboring property.

The subject parcel is an undeveloped site and the environmental conditions existing on the parcel are not caused by or created by the Applicant.

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- (5) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the critical area, and the granting of the variance will be in harmony with the purpose and intent of this section.

The Applicant has provided complete field studies to describe existing water quality and wildlife habitat. Proposed is improved water quality and mitigation in terms of replanting of forest cover at another site at a 3:1 ratio. No development is proposed in the RCA designated portion of the property.

- (6) That all identified habitat protection areas on or adjacent to the site have been protected by the proposed development and implementation of either on-site or off-site programs.

The Applicant has provided an acceptable plan of mitigation at an off-site location.

- (7) That the growth allocation for the county will not be exceeded by the granting of the variance.

The growth allocation is not affected.

- (8) That the variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.

Mitigation coupled with water treatment will prevent adverse impacts to adjacent parcels and the intent and purpose of the Code, particularly those sections associated with the Critical Area.

- (9) All applications for variance requests shall be filed in writing in accordance with Section 267-9D, of the Zoning Code. Notice of all variance requests and copies of applications filed in accordance with this section shall be sent to Chesapeake Bay Critical Area Commission within 10 working days of filing with the Department of Planning and Zoning. A copy of the recommendation of the hearing examiner or of the Board in acting on the variance shall be promptly sent to the Commission.

This provision has been met.

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The Department of Planning and Zoning thoroughly reviewed the provisions of Section 267-41.1G(2)(a) of the Harford County Code. The Hearing Examiner finds their conclusions compelling and adopts those findings of fact as follows:

G. Habitat Protection Areas

(2) The following areas of significant natural value are classified "habitat protection areas" and are so designated on each Zoning Map Overlay or herein defined:

(a) **Critical Area Buffer.** An area a minimum 100 feet in width as measured from the mean high water line of tidal waters, tidal wetlands and tributary streams shall be established and maintained in a natural condition. The Critical Area Buffer is expanded beyond 100 feet to include the following contiguous sensitive areas:

[1] Hydric soils, highly erodible soils, wetlands or other aquatic habitats, and steep slopes.

The subject property is located entirely within an expanded Buffer area because of wetlands that transect the property. The development, as proposed, will impact the Buffer.

[2] Steep slopes are defined as slopes, which equal or exceed 15% slope. Steep slopes shall be measured by transects spaced a minimum of 35 feet apart along the base of the slope. Transects measuring steep slopes shall be run perpendicular to the slope beginning at the base of the slope and shall measure slopes with a minimum of 35' run increments up the slope to the top of the slope or the boundary of the Critical Area, whichever is less. In the case of steep slopes within or contiguous to the Critical Area Buffer, the Buffer is additionally expanded beyond the expansions for the above-listed sensitive areas 4 feet for every 1% of slope as averaged over the contiguous steeply sloped area or to the top of the contiguous steeply sloped area, whichever is greater.

Not applicable. While the subject property contains steep sloped areas, these are not adjacent to the 100-foot Buffer, and therefore do not contribute to the expansion of the Buffer. A variance is not required for this section of the Code.

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Section 267-41.1G(2)(b) reads:

- (b) Nontidal wetlands. Those areas which meet the definition of non-tidal wetlands as set forth in § 267-4 (Harford County Code 1986, as amended), both mapped and located by field survey. A minimum area of 40,000 square feet is hereby established for designation as a non-tidal wetlands, is otherwise identified as a habitat protection area in this section or is shown to be hydrologically connected through surface or subsurface flow to streams and tidal waters.

The subject property contains wetlands that are hydrologically connected through surface or subsurface flow.

Section 267-41.1G.(2)(c) reads:

- (c) Habitats of state-designated threatened or endangered species or species in need of conservation, natural heritage areas and habitats of local significance.

The Applicant has noted that one state highly rare and one state rare species has been documented as occurring within the vicinity of the project site. These species are found within tidally influenced waters or shallow water and marsh areas. No development will occur within the open water area found on the property. There is an existing sewer line and 50 foot easement that separates the proposed development and the open water area. Therefore, a variance is not needed to this section of the code.

Section 267-41.1(G)(2)(d) reads:

- (d) Colonial waterbird nesting sites.

Not applicable to this variance request.

Section 267-41.1G(2)(e) reads:

- (e) Riparian forests and other forested areas utilized as breeding habitat by forest-interior-dwelling species.

Not applicable to this variance request.

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Section 267-41.1G(2)(f) reads:

- (f) Anadromous fish propagation waters.

Not applicable. The nearest body of water is Otter Point Creek, which is designated as Anadromous Fish Propagation Water. This project is located more than 700 feet from the closest tidal wetlands/water, and no water dependent activities are planned as part of this development. Therefore, a variance is not required for this section of the Code.

Section 267-41.1G(2)(g) reads:

- (g) Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or tidal and non-tidal wetlands

Not applicable to this variance request.

Section 267-41.1G(3) reads:

- (3) General provisions.

- (a) Development activities or other land disturbances, including commercial tree harvesting and agricultural activities, are prohibited within the boundaries of an identified habitat protection area unless the Zoning Administrator certifies that the location of the activities and/or the limitations and restrictions placed on them will avoid adverse impacts on the water quality protection and plant and wildlife habitat values of the area or to the species dependent upon such areas.

The Applicant has provided field verified information as to the extent of the impacts to habitat protection areas associated with the proposed variance request. All disturbances will be to the expanded Buffer. In order to meet the requirement of this section, all proposed impervious surfaces need to be minimized to the extent possible. New impervious surfaces must also be kept at a minimum of 25 feet from the edge of the stream channel, and any areas that are not to be disturbed and/or will not have structures or parking should be maintained in woody vegetation.

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Mitigation for the proposed impacts will also be required to meet the requirements of this section. All tree removal must be mitigated at a 3:1 ratio. Preferably, this should be provided within the same watershed and within the Buffer. The 10% pollutant reduction requirements must also be met for this site. Mitigation should also be provided to treat the stormwater runoff coming off of Route 40. Where possible, rain gardens should be utilized as a management facility. The mitigation proposal should include the types and locations of stormwater management facilities as well as a maintenance proposal for all facilities. This proposal should specify who will be responsible for the facilities, and it should include a maintenance schedule.

- (b) The location of roads, bridges or utilities shall be prohibited within the boundaries of a habitat protection area unless there is no feasible alternative, as determined by the Zoning Administrator in consultation with the Director of the Department of Public Works, in which case they shall be located, designed, constructed and maintained to provide maximum erosion protection, to minimize adverse effects on wildlife, aquatic life and their habitats and to maintain hydrologic processes and water quality. [Amended by Bill 01-35]

Not applicable. The Applicant is not proposing the construction of any roads, bridges, or utilities within the boundaries of a habitat protection area. Therefore, a variance is not required for this section of the Code.

- (c) All development activities that must cross or otherwise affect streams shall be designed to:

- [1] Retain tree canopy so as to maintain stream water temperatures within normal variation;

An intermittent stream crosses the subject property and the project, as proposed, will not impact the tree canopy around the stream.

- [2] Provide a natural substrate for streambeds; and

The project as proposed does not involve any disturbance to the streambed.

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[3] Minimize adverse water quality and quantity impacts of stormwater.

The Applicant indicates that stormwater quality and quantity control measures can be designed to treat runoff associated with the proposed development. Additional consideration to treating runoff from U.S. Route 40 should be incorporated into the final stormwater management plans since the natural filtering capacity of the site will be altered by development. Rain gardens should be utilized where possible to allow for infiltration.

Section 267-41.1.G.(4) – Critical Area Buffer

[1] The Buffer shall be maintained in natural vegetation and may include planted native vegetation where necessary to protect, stabilize or enhance the shoreline. In the case of development where the Buffer is not entirely established in woody vegetation, the Buffer shall be planted and maintained according to the standards set forth in the Forest Management Guide for Buffer plantings.

The Applicant is requesting a used car dealership to be constructed within the expanded Buffer. This will require the clearing of .79 acres of existing forest. Mitigation at a 3:1 ratio is required for disturbances to the Buffer. The Applicant has not submitted a mitigation plan.

[2] New development activities, including redevelopment activities and including structures, under-ground petroleum product storage tanks, roads, parking areas and other impervious surfaces, mining and related facilities or septic systems (and other disposal systems), may not be permitted in the Buffer, except for those necessarily associated with water-dependent facilities as approved in accordance with Subsection F(6) of this section. Replacement of existing under-ground petroleum product storage tanks shall be with above-ground tanks.

As proposed, the plan for the subject property will require the locating of structures and parking areas within the Buffer. These facilities are not related to a water-dependent facility and therefore, a variance is required from this section of the Code. The extent of the variance requested for the disturbance to the Buffer is the minimum relief necessary to realize a reasonable and significant use. However, any areas that are not to be disturbed and/or will not have structures or parking should be maintained in woody vegetation. A minimum 25 foot buffer should be left from the edge of the streams.

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- [3] Where agricultural use of lands within the area of the Critical Area Buffer ceases and the lands are proposed to be converted to other uses, the critical area buffer shall be established. Establishment of the buffer shall include the establishment of appropriate forest vegetation as specified in the Forest Management Guide. Appropriate surety and covenant shall also be required as specified in Subsection F(3)(b)[5][d] of this section.**

Not applicable. The subject property has been disturbed for the installation of the County sanitary sewer, and the remainder of the property is wooded and is not used for agricultural purposes. Therefore a variance is not required for this section of the Code.

- [4] For any commercial timber harvesting of trees by selection or for any cutting or clearing of land within the Critical Area Buffer, a Buffer Management Plan shall be prepared by a registered forester and approved by the Department of Natural Resources based upon recommendations of the Harford County Forestry Board and the Harford County Department of Planning and Zoning. Cutting or clearing operations specified in such plans shall be conducted in accordance with the following requirements:**

Not applicable. Commercial timber harvesting has not been proposed for this site. Therefore, a variance is not required for this section of the Code.

- [5] Except as specified below, any clearing of vegetation or removal of trees within the Buffer is prohibited unless a Buffer Management Plan is submitted and approved by the Department of Planning and Zoning prior to any clearing or removal.**

As submitted, the plan for the subject property will require the submission of a Buffer Management Plan.

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- [6]** The cutting of trees or removal of natural vegetation may be permitted in the Critical Area Buffer where necessary to provide access to private piers or to install or construct a shore erosion protection device or measure or a water-dependent facility, provided that the device, measure or facility has received all necessary state and federal permits and provided that a Buffer Management Plan has been approved by the Department of Planning and Zoning.

Not applicable. No private piers, shore erosion protection devices or water-dependent facilities are proposed for the subject property. Therefore, a variance is not required from this section of the Code.

- [7]** Individual trees may be cut for personal use, provided that this cutting does not impair the water quality or existing habitat value or other functions of the Buffer, and provided that the trees are replaced on an equal basis for each tree cut, as approved by the Department of Planning and Zoning. Planting specifications for replaced trees are given in Appendix F of the Harford County Chesapeake Bay Critical Area Management *Program, as amended*.

Not applicable to this variance request.

- [8]** Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures or which are in danger of falling and therefore causing the blockage of streams or resulting in accelerated shore erosion. Individual trees removed must be replaced on an equal basis for each tree cut, as approved by the Department of Planning and Zoning.

Not applicable to this variance request.

- [9]** Under the guidance of the Department of Natural Resources, horticultural practices may be used in the Buffer to maintain the health of individual trees. However, the clearing of understory may only be undertaken with a Buffer Management Plan approved by the Department of Planning and Zoning.

Not applicable to this variance request.

- [10]** Other cutting techniques may be undertaken within the Buffer under the advice and guidance of the Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

Not applicable to this variance request.

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[11] Buffer Exempt Areas. The following provisions apply to shoreline areas that have been identified as Buffer Exempt Areas in the Harford County Critical Area Program as shown on the Buffer Exempt Area maps attached hereto and incorporated hereby by reference. Buffer Exempt Areas are those lots of record as of December 1, 1985 where the pattern of residential, industrial, commercial or recreational development prevents the Buffer from fulfilling its intended purposes as stated in COMAR 27.01.09.01.B. For purposes of this Buffer Exempt Area section, development refers to sites with less than 15% existing impervious surface and redevelopment pertains to sites with greater than 15% existing impervious surface.

Not applicable. The subject property is not designated as a Buffer Exempt Area; therefore the conditions of these subsections do not apply.

Section 267-41.1G(4)(b) reads:

(b) Nontidal wetlands.

[1] A 75-foot buffer shall be established adjacent to non-tidal wetlands.

Not applicable. Because the non-tidal wetlands located on the subject property have resulted in the expansion of the Buffer over the entire property, the wetland buffer is included in the 100-foot Buffer. Therefore, a variance is not required for this section of the Code.

[2] Development activities shall not be permitted in non-tidal wetlands or the 75-foot non-tidal wetland buffer, except for permitted development associated with water-dependent facilities as listed in Subsection F(6) of this section.

Not applicable. The activities proposed are not related to a water-dependent facility. Therefore, a variance is not required for this section of the Code.

[3] Existing farm ponds and other existing man-made bodies of water for the purpose of impounding water for agriculture, water supply, recreation or waterfowl habitat are specifically excluded from coverage by the provisions of this district.

No applicable to this request.

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- [4]** Development activities in the drainage areas to non-tidal wetlands shall not adversely affect the quality or quantity of surface or subsurface flow to the non-tidal wetland so as to adversely affect its water quality and protection of fish, plant or wildlife habitat value.

As proposed, the plan for the subject property will require filling of the non-tidal wetlands and the location of development activities within the drainage areas to non-tidal wetlands. The minimal amount of disturbance necessary has been proposed, and approval of this disturbance is pending with the Army Corp of Engineers. Mitigation will be required and the Applicant has provided a reasonable plan of mitigation.

- [5]** The location of stormwater management measures is allowed in non-tidal wetlands and the 75-foot non-tidal wetland buffer only if the Zoning Administrator determines that there is no other technically feasible location and that the water quality benefits of the measures outweigh the adverse impacts on water quality and plant and wildlife habitat values of the non-tidal wetlands affected. In determining the adverse impacts of the location of such facilities, consideration can be given to the compensatory value of mitigation measures proposed to replace the lost water quality and habitat value of the affected non-tidal wetlands.

Not applicable. The non-tidal wetlands located on the subject property have resulted in the expansion of the Buffer over the entire property, the Critical Area 100-foot Buffer applies. Therefore, a variance is not required for this section of the Code.

Section 267-41.1G(4)(c) reads:

- (c)** Habitats of state-designated threatened or endangered species or species in need of conservation, designated natural heritage areas and habitats of local significance.

- [1]** Development activity and other land disturbances shall be prohibited in state-designated natural heritage areas, state-designated habitats of threatened and endangered species and species in need of conservation or identified habitats of local significance. Subject to the review of a site-specific study prepared in consultation with the Department of Natural Resources, the Zoning Administrator may approve development activities or disturbances if it can be shown that the proposed activities will not have or cause adverse impacts on the identified habitats.

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Not applicable. The Maryland Department of Natural Resources, Forest, Park, and Wildlife Services states that they have records of one state highly rare and one state rare species occurring within the vicinity of the project site. These species are found within tidally influenced waters or shallow water and marsh areas. No development is proposed to occur within the open water area found on the property. There is also an existing sewer line and 50 foot easement that separates the proposed development from the open water. Therefore, a variance is not required for this section of the Code.

- [2]** Forest management plans and soil and water conservation plans developed for forestry or agricultural operations within such protection areas shall include measures to protect the integrity of these habitats.

Not applicable. Forestry or agricultural operations are not proposed for the subject property. Therefore, a variance is not required for this section of the Code.

Section 267-41.1G(d) reads:

- (c)** Colonial waterbird nesting sites.

- [1]** A minimum one-fourth-mile protection area buffer shall be established around any identified colonial waterbird nesting sites unless, subject to the review of a site-specific study prepared in conjunction with the Department of Natural Resources, it can be shown that development activity or disturbances will not have or cause adverse impacts on the identified habitats. Any development activities or other disturbances which are allowed should not occur during the nest-building and incubation periods, approximately February through April.

Not applicable to this variance request.

- [2]** Noise from construction or development activities should be minimized during the breeding season of February through April in areas adjacent to the one-fourth mile protection area buffer in order to avoid adverse impacts on nesting colonial waterbirds. The applicant is required to contact the Department of Natural Resources for information on the specific breeding seasons.

Not applicable to this variance request.

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Section 267-41.1G.(4)(e) reads:

- (e) Riparian forests and other forested areas utilized as breeding habitat by forest interior dwelling species. The following management practices shall be followed in the case of development, forest operations or other activities in areas identified as breeding habitat for forest-interior-dwelling species in accordance with the procedures specified in the technical report, A Guide to the Conservation of Forest Interior Dwelling Birds in the Critical Area. (Appendix N of the Harford County Chesapeake Bay Critical Area Management Program):**

Not applicable to this variance request.

Section 267-41.1G(4)(f) reads:

- (f) Anadromous fish propagation waters. The following management measures shall apply to any streams identified as anadromous fish propagation waters:**

Not applicable. The nearest body of water is Otter Point Creek, which is designated as Anadromous Fish Propagation Water. This project is located more than 700 feet from the closest tidal wetlands/water, and no water dependent activities are planned as part of this development. Therefore, a variance is not required for this section of the Code.

The Hearing Examiner recommends approval of the Applicant's requests, subject to the following conditions:

- 1. The Applicant shall prepare a detailed site plan to be reviewed and approved through the Development Advisory Committee (DAC).**
- 2. The Applicant shall submit a final mitigation plan to the Department of Planning and Zoning for review and approval. The mitigation plan shall include the types and locations of stormwater management facilities as well as a maintenance proposal for all facilities. It should also include a maintenance schedule.**
- 3. All disturbances on the site should be mitigated for at a rate of 3:1. This mitigation should be in the form of forest plantings on another site, preferably in the same watershed and within the buffer.**
- 4. Any areas that are not to be disturbed and/or will not have structures or parking should be maintained in woody vegetation.**

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5. The 10% pollutant reduction needs to be met for the site since it is an IDA. Hopefully, this can be met on site with a measure such as the proposed rain gardens that will all for infiltration.
6. Impervious surfaces need to be minimized to the extent possible. Impervious surfaces should be as far from the stream/wetlands as possible and at a minimum of twenty-five feet from the edge of the stream channel. This may not be possible at the top of the streams where the used car display is adjacent to Route 40, but this minimum should be maintained on the rest of the site.
7. Mitigation should be proposed to treat some of the storm water runoff coming off of Route 40 in addition to the 10% pollutant reduction requirement. The proposal should include the types and locations of both, as well as a maintenance proposal for all facilities. The maintenance proposal should include who will be responsible for the facilities and a schedule.

Date AUGUST 13, 2002

**William F. Casey
Zoning Hearing Examiner**